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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,301	08/16/2005	Stephen Mulcahy	78803.03501	3670
34561 7590 09/30/2008 CHARLES N. QUINN FOX ROTHSCHILD LLP 2000 MARKET STREET, 10TH FLOOR PHILADELPHIA, PA 19103				
EXAMINER ELKINS, GARY E				
ART UNIT		PAPER NUMBER		
3782				
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09/30/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/509,301

**Applicant(s)**

MULCAHY ET AL.

**Examiner**

Gary E. Elkins

**Art Unit**

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. Claims 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, lines 6-8 are unclear with respect to how one of the side walls of the other pair of side walls (the side walls other than the side walls formed from at least two interlocking parts) is formed from two end flaps provided at respective opposite ends of each main body forming panel. Respective opposite ends of "each" main body forming panel do not appear to have two end flaps formed thereon. The end flaps 17, 21 forming one of the side walls are not at respective ends of "each" main body forming panel. In other words, they are located at only one end of each panel as opposed to respective ends of each panel. The other end connects to the side wall formed by panel 19.

In claim 12, lines 11 and 12, it is unclear how the interlocking parts are provided by opposing indents on each pair of opposing side walls. The side walls formed by the panels 17, 19, 21, i.e. one of the two pairs of opposing side walls do not have indents as disclosed. Only one of the two pairs include indents.

In claim 12, lines 12-14, it is unclear how one indent of each pair of sidewalls has a rounded surface and how the other indent of the pair of sidewalls has an angular surface. As indicated above, only one pair of sidewalls includes indented parts, i.e. the pair of sidewalls formed by flaps 11-16 and 22-27, respectively.

In claim 12, lines 15-17, "the rounded and indented surface on adjacent sides of the blank" lacks antecedent basis in the claim since no rounded and indented surface was previously set forth on "adjacent sides of the blank". The blank as shown in fig. 1 appears to show a rounded and intended surface or edge formed in flap 14, 15. However, this indent is seen as being on only a single "side" of the blank as best understood. It is noted that the specification fails to provide any description regarding what is considered to be a "side of the blank". Also, it

is unclear how a rounded and indented surface is "intersecting a side wall" to interlock therewith. As best understood, the indented edges or surfaces (I) interlock with themselves to form respectively, two side walls of the box or support. How they intersect one side wall is unclear. In line 17, "them" is unclear with respect to what previously recited elements are being referred to.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4-9 and 11, and claims 12-15 as best understood in view of paragraph 1 above, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringer in view of either Weaver or Forbes, Jr. Ringer discloses all structure of the claimed blank and container except a rounded surface on the other opposing side flaps. Each of Weaver and Forbes, Jr. teaches that it is known to make automatically collapsible end closures with rounded surfaces or edges (47, 59; rounded edges of flaps 22, 24, respectively). It would have been obvious to make the auto end closures in Ringer with rounded edges as taught by either Weaver or Forbes, Jr. to allow easier sliding engagement/disengagement of the interlock during erection and collapse of the container.

4. Claims 1, 2, 4-9 and 11, and claims 12-15, as best understood in view of paragraph 1 above, are rejected under 35 U.S.C. 103(a) as being unpatentable over Henry in view of Single and either Weaver or Forbes, Jr. Henry discloses all structure of the claimed blank/support except formation of the blank/support from corrugated board and a rounded surface on the other

opposing side flaps. Single teaches that it is known to make a collapsible container from corrugated board. Each of Weaver and Forbes, Jr. teaches that it is known to make automatically collapsible end closures with rounded surfaces or edges. It would have been obvious to make the blank/container in Henry using corrugated board as taught by Single to acquire the well known advantages of corrugated board, i.e. strength, insulation, puncture resistance, etc. within a container formed as in Henry. Corrugated board is notoriously well known in this art. It would further have been obvious to make the auto end closure in Henry with rounded edges as taught by either Weaver or Forbes, Jr. to allow easier sliding engagement/disengagement of the interlock during erection and collapse of the container.

5. Claims 10, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henry in view of Single and either Weaver or Forbes, Jr. as applied in paragraph 4 above, and further in view of either Rexford or Zimmerman. Modified Henry fails to evidence orientation of the flutes of the corrugated board longitudinally of the blank. Each of Rexford and Zimmerman teaches that it is known to orient the corrugations in a tubular carton blank in the longitudinal direction of the blank. It would have been obvious to orient the corrugations in modified Henry in the longitudinal direction of the blank as taught by either Rexford or Zimmerman to allow easier folding of the flaps during production and to provide greater crush resistance laterally at the corners of the container.

6. Claims 10, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ringer in view of either Weaver or Forbes, Jr. as applied in paragraph 3 above, and further in view of either Rexford or Zimmerman. Modified Ringer fails to evidence orientation of the flutes of the corrugated board longitudinally of the blank. Each of Rexford and Zimmerman

teaches that it is known to orient the corrugations in a tubular carton blank in the longitudinal direction of the blank. It would have been obvious to orient the corrugations in modified Ringer in the longitudinal direction of the blank as taught by either Rexford or Zimmerman to allow easier folding of the flaps during production and to provide greater crush resistance laterally at the corners of the container.

***Response to Arguments***

7. Applicant's arguments filed 05 July 2007 have been fully considered but they are not persuasive.

The remarks stress the intended use of the box as a support whereas the prior art references disclose an intended use for containing items. No structural distinction is seen between the claimed product and that suggested by the prior art as a result of the claimed intended use of the product as a "support". The prior art product is clearly capable of being used as a support for something else. The patentability of a product is not dependent upon its intended use.

The remarks stress the limitation in the claims that each end flap (17, 21 in the drawings) has a length substantially the same as the length of the middle panel (19). In response, each of Ringer and Henry includes end flaps (20, 25; 30, 14, respectively) which are clearly substantially the same length as the middle panel (17; 12, respectively), e.g. the length of each of the panels 20, 25 in Ringer adjacent the foldlines 21 and extending from top to bottom as shown in fig. 2 is clearly the same as the length of the panel 17. Note is made that the folds 30 at the top and bottom as shown in fig. 2 of Ringer are parallel or substantially parallel and that the end flaps 20, 25 at their longest dimension extend therebetween.

The remarks assert that the claimed rounded surface or edge on one side flap and the angular surface or edge on another side flap as set forth in claims defines over the edges suggested by the prior art since the claimed edges result in superior strength of the interlock. In response, each of Weaver and Forbes, Jr. suggests edges of the interlocking flaps which are both rounded and angular. The outer edges in each of these flaps at the indents meet at an angle and include an edge which is curved or rounded, e.g. 47, 59 in Weaver adjacent the angle formed within the indent. These edges form a frictional interlock between the flaps which maintains the box in a squared position and, if desired, would allow it function as a support. No structural distinction is seen between the claimed edges/interlock and that suggested by the prior art applied in the rejections. Contrary to the assertion in the remarks it is not believed that superior strength necessarily results from the claimed interlock/shapes of the indents over that suggested by the prior art.

The remarks assert that the support claimed cannot be collapsed without destroying the support. Contrary to Applicant's assertion, the specification in this application indicates on page 5, lines 15-22 that the box can re-collapsed albeit it may be difficult to do so. There is no indication in the specification nor can it be seen that the disclosed box must be destroyed to re-collapse it as asserted in the remarks. It is also believed that re-collapse of the boxes in the prior art configurations is difficult insofar as the frictional interlock will act against collapse. However, this, as in Applicant's device, does not preclude re-collapse or require destruction of the device to do so.

With respect to the patent to Ringer, the remarks assert that the reference has no separately defined middle panel. In response, Ringer clearly shows a separately defined middle

panel 17 formed between foldlines 21 on each side (see figs. 1 and 2) . With regard to Weaver, the reference also clearly shows a middle panel 16 between main panels 14, 18 as claimed.

With regard to the claim comparisons to the Ringer and Weaver references, it is asserted that the references cannot be "unglued and returned to the unfolded blank state". In response, in the prior art references, once glued, one cannot return them to the blank state without destroying the container, e.g. in Weaver, one cannot go from the fig. 3 position to the fig. 1 position without destroying the container. One cannot go to an "unglued" unfolded blank state without tearing the panels where they are glued and one cannot unglue the box to the unfolded blank in the prior art references. No distinction is seen.

The remarks assert that the references don't disclose two pairs of opposing side panels. In response, the references clearly disclose two pairs of side walls as claimed. The structures in the disclosed containers and blanks with regard to main panels and side panels directly correspond to the structures as claimed. Each reference shows two opposing side walls formed by collapse end flaps and two opposing side walls formed by three of the side panels where two of these side panels overlap at a seam to form a double panel side wall construction and the other side panel forms the opposing side wall. No distinction is seen in this regard between the disclosed structure and that disclosed in the prior art as applied.

The remarks assert that the claimed invention is incapable of holding contents. In response, it is believed that the claimed invention is capable of holding contents if desired. Since the prior art, which is meeting all claimed limitations, is capable of holding contents, the assertion is clearly fallacious. Further, as stated above, the claimed intended use as a "support" is not seen to define over the prior art constructions since they too could be used as a support.

With respect to the comparison in the remarks of the secondary references to the claims, these references are still considered to be suggestive of the concepts as applied to the base references in the rejections above for the reasons set forth in the rejections. More specifically, the use of angular and rounded edges or surfaces on autoforming closure flaps, corrugated board and orientation of the flutes as claimed are all known concepts in boxes and their application to the base reference constructions is considered prima facie obvious. No other distinctions are seen between the claimed invention and that evidenced by the base references as indicated in the paragraphs above.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

/Gary E. Elkins/  
Primary Examiner, Art Unit 3782

**Application Number****Application/Control No.**

10/509,301

**Examiner**

Gary E. Elkins

**Applicant(s)/Patent under  
Reexamination**

MULCAHY ET AL.

**Art Unit**

3782